

(c) If fewer than three applicants file timely applications by the cut-off date, the unassigned NWN frequencies will be assigned on a first-come, first-served basis to applicants meeting the criteria of subsection (b).

(d) *Comparative Procedures.* Comparative procedures to evaluate mutually exclusive NWN applications will be conducted according to the following procedure.

(1) *Acceptance for Filing.* The Commission shall issue a Public Notice listing all mutually exclusive applications accepted for filing.

(i) *Petitions to Deny.* Petitions to Deny applications will be due thirty days after applications are placed on public notice as accepted for filing.

(ii) *Consolidated Reply to Petitions to Deny.* A consolidated reply to petitions to deny filed against an application will be due fifteen days after petitions to deny are filed.

(iii) *Other Pleadings.* Other pleadings will not be accepted absent a showing of good cause.

(2) *Hearing Designation Order.* After receiving petitions to deny and consolidated replies, the Commission will issue a hearing designation order (HDO) specifying issues to be considered in the comparative hearing and designating an administrative law judge.

(i) *Notice of Appearance.* Within twenty days of publication of the HDO, parties will be required to file Notices of Appearance. See 47 C.F.R. § 1.221(c).

(ii) *Hearing Fee.* Within twenty days of publication of the HDO, parties will be required to submit the hearing fee, as specified in 47 C.F.R. § 1.1105.

(3) *Discovery.* In order to expedite comparative hearings for mutually exclusive NWN applications, discovery ordinarily will be limited as described below.

(i) *Document Requests.* All applicants designated for hearing will be required to file requests for production of documents within 10 days of publication of the HDO.

- (ii) Response to Document Requests. All applicants served with a document production request, within 40 days of the publication of the HDO, shall produce all documents responsive to a request, request a protective order, or assert a privilege.
- (iii) Additional Document Requests. Ordinarily additional documents requests will not be granted. Upon good cause shown, however, the ALJ may grant requests for additional document production. Motions requesting additional document production must be filed within fifty days of the publication of the HDO.
- (iv) Motions to Compel. Motions to compel filed in response to a claimed privilege with respect to a document production must be filed within sixty days of the publication of the HDO.
- (v) The ALJ ordinarily will be expected to rule on motions to compel and motions for additional discovery within twenty days of the filing of the motion.
- (4) Motions to Enlarge Issues. Although motions to enlarge issues will ordinarily not be accepted, in extraordinary cases the ALJ may, in his discretion, add issues against an application upon the motion of another party or upon his own motion. Any motion to enlarge issue must show good cause and must be filed within 90 days of publication of the HDO.
- (5) Direct Case. Parties will file their direct case, containing all exhibits the applicant intends to rely upon, within 30 days of the close of all discovery.
- (6) Rebuttal case. Parties will file rebuttal cases within 45 days of the filing of parties' direct cases.
- (7) Hearing. The ALJ will conduct a hearing or hearings to admit evidence into the record in the comparative proceeding. Ordinarily oral cross-examination will not be permitted. Upon the motion of any party or upon the motion of the ALJ, witnesses may be subjected to cross-examination. After all evidence has been received into the record, the ALJ will close the record and establish a schedule for the filing of proposed findings of fact and conclusions of law. Proposed finding shall ordinary be expected to be filed within 45 days of the close of the record.

(8) *Initial Decision.* Within 60 days of the filing of proposed finding of fact and conclusions of law, the ALJ shall issue an initial decision ranking applications and making individual determinations as to each applicant's legal, technical, and financial qualifications for licensing in the NWN service. Licenses will be issued to all qualified applicants in the order of the ALJ's ranking until no frequencies or qualified applicants remain. All other applications will be dismissed.

(9) *Appeal of the Initial Decision.* Petitions for review of the ALJ's initial decision shall be filed within 30 days of the publication of the initial decision. Petitions for review will be acted upon by the Commission rather than the Review Board.

**§ 22.1217      *Demonstration of financial qualifications.***

Applicants will be required to demonstrate their financial ability by showing sufficient net liquid assets to meet realistic:

(a) Estimated costs of the proposed construction and other initial expenses associated with meeting all benchmarks up to and including the two year benchmark detailed in § 22.43(f);

(b) Estimated operating expenses for two years;

(c) Estimated research and development expenses for any new technologies the applicant proposes to utilize.

For purposes of this section, applicants are not entitled to rely upon estimated revenues derived in the first two years of operation.